

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CONNIE J. SCHAFER

Claimant

VS.

O'REILLY AUTOMOTIVE, INC.

Respondent,

Self-Insured

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Docket No. 227,276

ORDER

Claimant appealed the October 4, 1999 Award and October 6, 1999 Award Nunc Pro Tunc both entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument in Wichita, Kansas, on January 14, 2000.

APPEARANCES

David H. Farris of Wichita, Kansas, appeared for the claimant. Douglas C. Hobbs of Wichita, Kansas, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant alleges she injured her neck and right upper extremity in a February 4, 1997 work-related automobile accident and that she sustained additional injury to her right upper extremity after that accident as she continued to work for the respondent through July 11, 1997. Finding Dr. Paul S. Stein's testimony more credible than Dr. Pedro A. Murati's, the Judge found that claimant injured her neck in the February 1997 accident and, based upon the functional impairment rating, was entitled to receive an award for a three percent permanent partial general disability.

Claimant contends Judge Frobish erred by failing to find that in the February 1997 accident claimant sustained "contusional carpal tunnel syndrome," which was then aggravated and accelerated by the work that she performed for the respondent through her last day on July 11, 1997. Additionally, the claimant contends the Judge should have adopted Dr. Murati's opinion that claimant had a 20 percent whole body functional impairment rating for her neck and right upper extremity injuries and based the award upon that rating.

On the other hand, the respondent contends the Judge's findings and conclusions should be affirmed.

The only issue before the Appeals Board on this appeal is the amount of claimant's functional impairment.

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

1. On February 4, 1997, Ms. Connie J. Schaffer injured her neck when the small pickup truck that she was driving was rear-ended by another car. At the time of the accident, Ms. Schaffer was working for O'Reilly Automotive, Inc. (O'Reilly's). The parties stipulated that the accident arose out of and in the course of employment.
2. Because her neck was hurting, the next day Ms. Schaffer sought medical treatment at a minor emergency center.
3. Despite the accident, Ms. Schaffer continued working for O'Reilly's. Because of the accident, the company placed Ms. Schaffer in the warehouse and eliminated her driving duties. Ms. Schaffer continued to work for O'Reilly's until she quit on approximately July 11, 1997. Since O'Reilly's, Ms. Schaffer has worked for at least two other employers.
4. Because of ongoing symptoms, Ms. Schaffer sought additional medical treatment and was referred to board certified neurosurgeon Paul S. Stein, M.D. The doctor first saw Ms. Schaffer on February 21, 1997.
5. On December 24, 1997, Ms. Schaffer was involved in a second automobile accident where she was again rear-ended. But that accident was not work-related. Although Ms. Schaffer doesn't recall it, according to Dr. Stein's medical records that accident caused her additional neck pain for which she requested physical therapy.
6. Dr. Stein treated Ms. Schaffer at least through March 4, 1998, when he last spoke with her by telephone. Based upon his evaluation, which included several MRIs, Dr. Stein believes that the February 1997 accident caused a cervical strain that was superimposed upon some degenerative disease, all of which equates to a 2-3 percent whole body functional impairment according to the fourth edition of the AMA Guides to the Evaluation of Permanent Impairment.
7. The only other doctor who testified in this claim was Dr. Pedro A. Murati. He diagnosed Ms. Schaffer as having a herniated nucleus pulposus between the sixth and seventh cervical discs, a lateral protrusion between the fifth and sixth cervical discs, and contusional right carpal tunnel syndrome. He also believes that Ms. Schaffer aggravated and accelerated the carpal tunnel syndrome by working in the O'Reilly's warehouse after the February 1997 accident. Dr. Murati testified that Ms. Schaffer has a 20 percent whole body functional impairment rating due to her work-related injuries.

8. The Judge found Dr. Stein's opinion of functional impairment more credible than Dr. Murati's and the Appeals Board agrees. Because Ms. Schaffer is a poor historian, she failed to provide Dr. Murati with an accurate history of neck symptoms following the December 24, 1997 automobile accident. The Appeals Board affirms the Judge's finding that Ms. Schaffer sustained a three percent whole body functional impairment as a result of the February 4, 1997 accident. The Appeals Board also finds that Ms. Schaffer failed to prove that she sustained additional injury during that period that she continued to work for O'Reilly's following the February 4, 1997 accident.

CONCLUSIONS OF LAW

1. The Award and the Award Nunc Pro Tunc should be affirmed.
2. Ms. Schaffer's claim for permanent partial general disability benefits is limited to her functional impairment rating. As determined above, in the February 4, 1997 accident Ms. Schaffer strained her neck, which constitutes a three percent whole body functional impairment.

AWARD

WHEREFORE, the Appeals Board affirms the October 4, 1999 Award and October 6, 1999 Award Nunc Pro Tunc both entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of January 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David H. Farris, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director